

**DATE:** August 3, 2004

**TO:** Members of the Commission for the Revision of the Rules of Professional Conduct

**FROM:** Lauren McCurdy

**SUBJECT:** Agenda for Your Two-Day Meeting on Friday & Saturday, August 27 & 28, 2004

Enclosed, please find the agenda materials for your two-day May meeting to be held as follows:

**Friday, August 27, 2004**  
**(9:30 am - 5:00 pm)**

**Los Angeles–State Bar Office**  
**1149 South Hill Street**  
**Los Angeles, CA 90015**  
**(213) 765-1000**

**Saturday, August 28, 2004**  
**(9:00 am - 5:00 pm)**

**IMPORTANT DEADLINES:** Please review the agenda carefully as it includes: (1) a deadline of **August 10<sup>th</sup>** for a staff supplemental mailing of late materials that has been authorized by the Chair; and (2) a deadline of **August 16<sup>th</sup>** for e-mail comments on specific items that will determine issues to be discussed and issues that are subject to being deemed approved as presented by the co-drafters.

**LODGING ARRANGEMENTS:** If you haven't already done so, please contact Audrey Hollins at (415) 538-2167 or [audrey.hollins@calbar.ca.gov](mailto:audrey.hollins@calbar.ca.gov) for a hotel room. Rooms at a discounted rate of \$110 are available at the Omni Hotel and must be booked directly through Audrey. The Commission's budget only provides for one night's stay for this two-day meeting. Please contact us if you require an additional night.

**ATTENDANCE:** In order to ensure that there is a quorum and adequate participation, if you are unable to attend in-person, please contact staff to make arrangements by telephone. As always, notify staff if you are unable to attend a meeting under any circumstances.

**ADDITIONAL PUBLIC COMMENT RECEIVED:** Also enclosed with this mailing are two additional written comments. One is from the Los Angeles County Bar Association addressing rule 2-200(A). Please review this comment in connection with open agenda item III.C. The second comment is from the law firms of Morrison & Foerster, Heller Ehrman, and Dorsey & Witney. This comment addresses the global issue of close tracking of the ABA Model Rules as a means of moving toward national uniformity. Please add both comments to your clear public comment binder.

**REMINDERS FROM THE CHAIR**

1. The lead drafter is responsible for getting the assignment to staff in time for the agenda distribution. If that person cannot timely complete the assignment, he or she must get a substitute who will complete the assignment on time and advise staff and the chair of this substitution.
2. If a person has not sent comments on an agenda item by e-mail prior to the meeting, he or she may, at the Chair's discretion, only get one opportunity to comment on that agenda item. Anyone sending e-mail comments on an agenda item should send copies to all Commission members, staff and our consultant. Please note: all e-mails exchanged will be made part of the open session agenda materials; and, members who send e-mails will not be bound by the positions taken therein as the deliberative process at the meeting will not be constrained or prejudiced by the exchange of e-mails.
3. In order to ensure that there is a quorum and adequate participation, if you are unable to attend in-person, please contact staff to make arrangements to attend by video-conference from the alternate Bar site, or by telephone. As always, notify staff if you are unable to attend a meeting under any circumstances.

/Imm  
enclosures  
cc: Marie Moffat

**STATE BAR OF CALIFORNIA**  
**COMMISSION FOR THE REVISION OF THE RULES**  
**OF PROFESSIONAL CONDUCT**

**OPEN SESSION AGENDA**

**Friday, August 27, 2004**  
**(9:30 am - 12:30 and 1:30 - 4:45 pm)**

**Saturday, August 28, 2004**  
**(9:00 am - 5:00 pm)**

**State Bar of California—Los Angeles**  
**1149 South Hill Street**  
**Los Angeles, CA 90015**  
**(213) 765-1000**

*[NOTE RE MEETING SITE: For members of the public, the open session of this meeting also can be accessed by video-conference from the State Bar Office in San Francisco at 180 Howard Street, Room 8B. Members of the public who wish to attend this meeting at either site are asked to call Audrey Hollins at 415-538-2167.]*

**I. APPROVAL OF OPEN SESSION ACTION SUMMARIES FROM THE MAY 7 & 8, 2004 AND JULY 9, 2004 MEETINGS**

(Draft action summary for the May 7 & 8, 2004 and July 9, 2004 meeting to be circulated prior to the August meeting.)

**II. REMARKS OF CHAIR**

**A. Chair's Report**

(The Chair will provide an oral report on administrative, procedural, or other informational matters.)

**B. Staff's Report**

(Staff will report on the activities of COPRAC and the Board of Governors.)

III. **MATTERS FOR ACTION** (Name with asterisk is lead drafter, underline indicates a newly added co-drafter.)

\*Tuft  
Betzner  
Martinez  
Peck

A. **Consideration of Rule 5.4. Professional Independence of a Lawyer (aka Rule 1-310X)**

[anticipated 1-hour discussion]

(Materials enclosed.) [pages 1 -30]

All Commission members are assigned to review the materials and send any comments to the co-drafters by 2:00 PM on Monday, August 16, 2004.

Only matters raised in these comments will be considered at the August meeting. All other matters are subject to being deemed approved as presented by the co-drafters.)

\*Tuft  
Betzner,  
Martinez,  
Peck

B. **Consideration of Rules: 1-300 (Unauthorized Practice of Law); 1-320 (Financial Arrangements With Non-Lawyers); and 1-600 (Legal Service Programs)**

[anticipated 1-hour discussion]

(No materials enclosed. The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing. The chair has requested that lead drafters confer with co-drafters in the development of materials. )

\*Lamport,  
Julien,  
Vapnek

C. **Consideration of Rule 2-200. Financial Arrangements Among Lawyers**

[anticipated 1-hour discussion]

(Materials enclosed.) [pages 31-36]

In addition to the materials enclosed, refer to materials previously distributed for the July 9<sup>th</sup> meeting, item III.G. In accordance with the assignment given to all Commission members, the only issues to be discussed at the August meeting are the enclosed comments that were received by the July 30<sup>th</sup> deadline and the comments previously received from Ellen Peck, Jerry Sapiro, Kurt Melchior, Nancy Moore, and Becky Stretch. All other matters are subject to being deemed approved as presented by the co-drafters.)

\*Melchior  
Sapiro

- D. Consideration of Proposed New Rule or Amended Rule Prohibiting a Request or Agreement to Waive the Attorney-Client Privilege**  
[anticipated 1/2-hour discussion]  
(No materials enclosed. The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing. The chair has requested that lead drafters confer with co-drafters in the development of materials.)

\*Mohr  
George  
Julien  
Ruvolo

- E. Consideration of Rule 1-400. Advertising and Solicitation**  
[anticipated 1-hour discussion]  
(Materials enclosed.) [pages 37-80]  
All Commission members are assigned to review the materials and send any comments to the co-drafters by 2:00 PM on Monday, August 16, 2004.  
Only matters raised in these comments will be considered at the August meeting. All other matters are subject to being deemed approved as presented by the co-drafters.)

\*Lamport  
Julien  
Melchior

- F. Consideration of Rule 1-100. Rules of Professional Conduct, in General**  
[anticipated 1-hour discussion]  
(Materials enclosed.) [pages 81-84]  
The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing. The chair has requested that lead drafters confer with codrafters in the development of materials.)

\*Betzner  
Mohr

- G. Discussion of Rule Numbering System**  
[anticipated 1-hour discussion]  
(No materials enclosed. The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing. The chair has requested that lead drafters confer with co-drafters in the development of materials.)

\*Voogd,  
Peck

**H. Consideration of Proposed New Rule re Honesty in Billing [Formerly “Recording Time”]**

[anticipated 1/2-hour discussion]  
(Materials enclosed.) [pages 85-86]

All Commission members are assigned to review the materials and send any comments to the co-drafters by 2:00 PM on Monday, August 16, 2004.

Only matters raised in these comments will be considered at the August meeting. All other matters are subject to being deemed approved as presented by the co-drafters.)

\*Martinez,  
Betzner,  
Voogd

**I. Consideration of Rule 2-100. Communication With a Represented Party**

[anticipated 1-hour discussion]  
(Materials enclosed.) [pages 87-98]

All Commission members are assigned to review the materials and send any comments to the co-drafters by 2:00 PM on Monday, August 16, 2004.

Only matters raised in these comments will be considered at the August meeting. All other matters are subject to being deemed approved as presented by the co-drafters.)

\*Melchior  
Martinez  
Sapiro

**J. Consideration of Rule 2-300. Sale or Purchase of a Law Practice of a Member, Living or Deceased**

[anticipated 1-hour discussion]  
(Staff background materials enclosed.) [pages 99-116]

The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing. The chair has requested that lead drafters confer with co-drafters in the development of materials.)

\*Betzner  
George

**K. Consideration of Rule 2-400. Prohibited Discriminatory Conduct in a Law Practice**

[anticipated 1-hour discussion]  
(Staff background materials enclosed.) [pages 117-122]

The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing. The chair has requested that lead drafters confer with co-drafters in the development of materials.)

\*Vapnek  
Peck  
Ruvolo

- L. Consideration of Rule 3-110. Failing to Act Competently**  
[anticipated 1-hour discussion]  
(Materials enclosed.) [pages 123-142]  
**All Commission members are assigned to review the materials and send any comments to the co-drafters by 2:00 PM on Monday, August 16, 2004.**  
Only matters raised in these comments will be considered at the August meeting. All other matters are subject to being deemed approved as presented by the co-drafters.)

\*Ruvolo  
Foy  
Julien

- M. Consideration of Rule 3-120. Sexual Relations With Client**  
[anticipated 1-hour discussion]  
(Staff background materials enclosed.) [pages 143-158]  
**The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing.** The chair has requested that lead drafters confer with co-drafters in the development of materials.)

\*Voogd  
George  
Tuft

- N. Consideration of Rule 3-200. Prohibited Objectives of Employment**  
[anticipated 1-hour discussion]  
(Materials enclosed.) [pages 159-172]  
**All Commission members are assigned to review the materials and send any comments to the co-drafters by 2:00 PM on Monday, August 16, 2004.**  
Only matters raised in these comments will be considered at the August meeting. All other matters are subject to being deemed approved as presented by the co-drafters.)

\*Lamport  
Tuft  
Voogd

- O. Consideration of Rule 3-300. Avoiding Interests Adverse to a Client**  
[anticipated 1-1/2 hour discussion]  
(Comment & staff background materials enclosed.) [pages 173-190]  
**The chair has authorized a supplemental mailing for late materials for this item. Co-drafters are assigned to submit materials for this item to staff by 2:00 pm on August 10<sup>th</sup>, to be included in the supplemental mailing.** The chair has requested that lead drafters confer with co-drafters in the development of materials.)

---

**STATE BAR OF CALIFORNIA**  
**COMMISSION FOR THE REVISION OF THE RULES**  
**OF PROFESSIONAL CONDUCT**

---

**CLOSED SESSION AGENDA\***

**Friday, August 27, 2004**  
**(4:45 pm - 5:00 pm)**

**LA–State Bar Office**  
**1149 So. Hill Street, Room 723**  
**Los Angeles, CA 90015**

- I.    APPROVAL OF CLOSED SESSION SUMMARIES FROM THE MAY 7 & 8, 2004 AND JULY 9, 2004 MEETINGS**  
(Draft action summaries to be circulated prior to August meeting.)
  
- II.   ADVICE OF COUNSEL ON OPEN SESSION AGENDA ITEMS**
  
- III.   ACTION ITEMS.**
  - A.    Emergency action items, if any.**

\*    Closed pursuant to Article 3, Section 2, Subdivision (b), Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors.